

§ 572.101 Agency authority.

(a) An agency may pay an appointee's travel expenses to the first post of duty whenever the agency determines that such payment is appropriate for any position.

(b) An agency may pay the expenses of an individual being considered for employment for travel to and from a pre-employment interview.

§ 572.102 Agency discretion.

Payment of travel expenses for any individual candidate or appointee will be at the discretion of the employing agency. A decision by one agency that payment is appropriate for a particular position does not require a like determination by any other agency filling similar positions. A decision made in connection with one specific vacancy does not require a like decision in connection with future vacancies. In deciding to pay travel and transportation or interview expenses in filling any position, the agency should consider such factors as availability of funds as well as the desirability of conducting interviews for a particular job or offering a recruiting incentive to a particular candidate.

§ 572.103 Recordkeeping.

Each agency will maintain records of payments made under this authority and will make those records available to OPM on request.

[FR Doc. 91-3502 Filed 2-8-91; 5:00 pm]

BILLING CODE 6325-01-M

5 CFR Parts 550 and 553**Reemployment of Military and Civilian Retirees to Meet Exceptional Employment Needs**

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement provisions of the Federal Employees Pay Comparability Act of 1990 (FEPCA). The Act permits OPM to authorize retired military and Federal civilian personnel to be employed without loss of pay or annuity when such employment is needed to meet exceptional difficulty in recruiting or retaining qualified candidates for particular positions or under other unusual circumstances.

DATES: Section 108 of FEPCA and the interim regulations set forth below are

effective on February 14, 1991.

Comments must be received by April 15, 1991.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, room 6P08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 806-0960.

SUPPLEMENTARY INFORMATION:

Generally, 5 U.S.C. 5532 requires reduction in the retired or retainer pay of any regular officer who is employed in a civilian position. The law also requires reduction in the retired or retainer pay of a retired reserve or enlisted member if combined compensation from civilian salary and retired or retainer pay exceeds the base pay for Executive Level V. No reduction is required if the member's retired or retainer pay is based in whole or in part on a combat disability as defined in the law. Under 5 U.S.C. 8344 and 8468, the amount of an annuity under the Civil Service Retirement System or the Federal Employees Retirement System is generally deducted from the basic pay of an annuitant who is reemployed in a Federal civilian position.

Section 108 of FEPCA sets out two basic conditions under which OPM may authorize exceptions to the reduction in pay or annuity normally required for either military or civilian retirees: for temporary employment that "is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances" (which may be delegated to agencies); and "on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee."

The interim regulations require that most requests for reemployment without penalty be approved by OPM on a case-by-case basis. The regulations do, however, provide that OPM will entertain individual agency requests for delegation to meet specific situations. The situations must result from emergencies posing immediate and direct threat to life or property or emergencies resulting from other unusual circumstances.

Generally, the candidate must be off the agency's rolls before a request is submitted. OPM will make exceptions to this requirement in very rare instances. OPM will also consider requests involving currently reemployed annuitants or military retirees during the 180-day period immediately following

issuance of the interim regulations, which such requests would permit an agency to retain an individual whose services are needed to complete a critical or emergency project or whose loss would create exceptional recruiting difficulty.

Requests for approval of individual cases or for delegation of authority must be submitted by the agency head or a designee at the agency or departmental headquarters level. An agency may submit a combined request when the same circumstances apply to several individuals, but must name each one and show that each proposed action meets the statutory criteria.

Because OPM cannot identify in advance all circumstances or combinations of circumstances that may support individual waivers or delegation of authority, the interim regulations set out only basic criteria for submission of requests. Requests based on emergencies or other unusual situations must result from disasters or other unforeseen occurrences or from circumstances beyond normal seasonal fluctuations in workload. Requests based on exceptional recruiting difficulty must address such issues as: length and breadth of recruiting efforts; quality of response; declination rate; unusual qualification requirements of working conditions; possibility of job reengineering or contracting; and any other relevant factors. Some of these factors may be omitted if inappropriate in a particular case, but the total evidence submitted must demonstrate that a legitimate recruiting need cannot be met without the requested waiver. Requests based on exceptional need to retain a qualified employee must show good cause to believe he/she actually will retire (or, in the case of a military retiree, will resign from the civilian position). In addition, the agency must show either that the employee's retirement or resignation would create an exceptional recruiting problem or that the person is critical to an ongoing project and that the project is critical to the agency.

The interim regulations provide that OPM will set a time limit for the waiver in each case to coincide with expected duration of the agency's exceptional need. Continuation of the waiver beyond the limit set in an individual case must be requested on the same basis as initial authorization.

Because the FEPCA provisions relating to military and civilian retirees are almost identical, the interim regulations will apply equally to both groups. (The only difference is in

treatment of service for which exception is approved for future retirement purposes. FEPCA amended 5 U.S.C. 8344 and 8468 to provide that such service is not creditable for retirement. No such provision was enacted with regard to civilian service of military retirees appointed with exceptions to the dual compensation restrictions of 5 U.S.C. 5532. Those appointees are, however, subject to existing limits on crediting of combined military and civilian service contained in 5 U.S.C. 8332 and 8411.)

The interim regulations will replace the current provisions contained in subpart F of 5 CFR part 550 delegating to agencies authority to approve waivers of dual compensation restrictions for individuals who were receiving retired or retainer pay before enactment of the Civil Service Reform Act. This change will not affect the conditions of waivers previously approved by agencies under the delegated authority. However, all future waivers will require OPM approval under the revised regulations. We believe establishment of uniform waiver criteria is needed to afford equitable treatment to all retired military personnel who are appointed to civilian positions.

Waiver of Notice of Proposed Rulemaking

FEPCA provides that these new legal flexibilities will become effective within 90-180 days following enactment. In order to give practical effect to this legislation at the earliest authorized date, I find that good cause exists to waive the general notice of proposed rulemaking and to make these regulations effective in less than 30 days.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects

5 CFR Part 550

Government employees, Wages, Civil defense, Administrative practice and procedure.

5 CFR Part 553

Government employees, Wages, Retirement, Administrative practice and procedure.

Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 550 and is adding a new 5 CFR part 553 to read as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for subpart F continues to read as follows:

Authority: 5 U.S.C. 5532.

2. Section 550.603 is removed; § 550.604 is redesignated as § 550.603; and paragraph (b) of the newly designated § 550.603 is revised to read as follows:

§ 550.603 Administrative responsibilities. * * * * *

(b) *Employing agencies.* (1) Federal agencies are responsible for notifying the appropriate uniformed service pay center concerning the Federal civilian pay of retired members according to instructions provided in the Federal Personnel Manual.

(2) If an agency believes that exception to the reduction in retired or retainer pay required by section 5532 of title 5, United States Code, is justified in an individual case based on an emergency posing direct and immediate threat to life or property or on exceptional difficulty in recruiting or retaining a qualified candidate for a position, the agency may submit a request to OPM or approve an exception under delegated authority from OPM as provided in part 553 of this chapter. The agency is responsible for notifying the appropriate uniformed service finance center of any approved exception.

3. A new part 553 is added to read as follows:

PART 553—REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Subpart A—General Provisions

Sec.

- 553.101 Applicability.
- 553.102 Definitions.
- 553.103 General policy.

Subpart B—Special Provisions for Reemployment Without Penalty to Meet Exceptional Recruiting or Retention Needs

- 553.201 Requesting OPM approval for reemployment without penalty in individual cases.
- 553.202 Requests for delegation of authority to approve reemployment without penalty in emergencies.
- 553.203 Status of individuals serving without penalty.

Authority: 5 U.S.C. 5532, 8344, and 8468.

Subpart A—General Provisions

§ 553.101 Applicability.

This subpart applies to employment of both civilian annuitants who would be subject to annuity offset under 5 U.S.C. 8344 or 5 U.S.C. 8468 and former members of the uniformed services who would be subject to reduction in retired or retainer pay under 5 U.S.C. 5532.

§ 553.102 Definitions.

(a) *Agency*, as used in this part, means an executive agency as defined in 5 U.S.C. 105.

(b) *Annuitant*, as used in this part, refers to a current or former civilian employee who is receiving, or meets the legal requirements and is applying or has announced intention to apply for, an annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on his or her service.

(c) *Retiree*, as used in this part refers to either an annuitant as defined in paragraph (b) of this section or a former member of a uniformed service who is receiving retired or retainer pay.

§ 553.103 General policy.

(9) *Agency discretion and responsibility.* The decision to request an exception, or to grant an exception under delegated authority, for any individual under any of the provisions of this part will be at the discretion of the employing agency. A determination made in connection with one position does not require a like determination in connection with any other position. In deciding whether to request an exception or grant an exception under delegated authority, each agency is expected to weigh fiscal responsibility and employee equity and should consider such factors as availability of funds as well as the criteria set out in this part.

(b) *Application of exceptions.* An exception to the reduction in retired pay provisions of 5 U.S.C. 5532 or to the salary offset provisions of 5 U.S.C. 8344 or 8468 authorized by OPM or an agency under this part applies only to the particular individual for whom it was authorized and only while that individual continues to serve in the same or a successor position. The exception terminates upon the individual's assignment to a different position unless a new exception is authorized under the provisions of this part.

Subpart B—Special Provisions for Reemployment Without Penalty to Meet Exceptional Recruiting or Retention Needs

§ 553.201 Requesting OPM approval for reemployment without penalty in individual cases.

(a) *Request by agency head.* The head of an agency may request OPM to approve individual exceptions on a case-by-case basis to meet temporary emergency hiring needs or when the agency has encountered exceptional difficulty in recruiting or retaining a qualified candidate for a particular position. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) *Requirements for all requests.* (1) Each request must identify the individual for whom the exception is requested, the appointing authority to be used, and the position to which he or she will be appointed.

(2) The request must be submitted in accordance with the criteria set out in paragraph (c), paragraph (d), or paragraph (e) of this section.

(3) Unless the request is submitted in accordance with paragraph (e) of this section, the individual must be off the agency's rolls before submission.

(c) *Requests based on an emergency hiring need.* An agency may request reemployment without penalty for an individual whose services are needed on a temporary basis to respond to an emergency involving a direct threat to life or property or other unusual circumstances. Requests submitted on this basis must meet the following criteria:

(1) *Nature of emergency.* Describe the military threat, natural disaster, or other unforeseen occurrence, the date it occurred, and the expected duration of the emergency response effort.

(2) *Need for the individual's services.* The agency must show either that the individual is uniquely qualified for the emergency response work to be done or that the number of positions to be filled and/or urgency of response justifies making the particular appointment without further delay. OPM will not approve reemployment without penalty under 5 U.S.C. 5532, 8344, or 8468 solely to meet normal seasonal workload fluctuations.

(d) *Requests based on severe recruiting difficulty.* Generally, requests for exception will be based on exceptional difficulty in recruiting a qualified candidate for a particular

position. Requests submitted on this basis must include a description of the length, breadth, and results of the agency's recruiting efforts for the position and any other factors demonstrating that a legitimate recruiting need cannot be met without the requested waiver. These factors may include, but are not limited to, unusual qualification requirements or working conditions, possibility of job reengineering or contracting, or a need to fill the position without further delay.

(e) *Exceptions based on need to retain a particular individual.* In very rare cases, an exception may be appropriate when an agency needs to retain the services of a particular individual who is uniquely qualified for an ongoing project. Requests submitted on this basis must meet the following criteria:

(1) *Critical nature of project.* The agency must describe the importance of the project to the agency's mission, the potential costs of project failure or delay, legislative or Presidential deadlines, if any, and any other factors demonstrating that the project is unusually critical. Exceptions will not be approved under this paragraph merely to avoid delay in scheduled completion of ongoing work.

(2) *Candidate's unique qualifications.* The agency must describe the knowledges, skills, and abilities possessed by the individual that are essential for successful completion of the project and that could not be acquired by another appointee within a reasonable time.

(3) *Need for retention.* The agency must show good cause to believe that the employee will retire (or, in the case of a military retiree employed in a civilian position, will resign from that position) and that the agency will lose his or her services if the exception is not granted.

(4) *Other staffing options.* While an agency in this situation is not required to conduct outside recruiting, the request for exception must address why the work could not be assigned to other employees involved with the same project.

(f) *Length of exceptions.* OPM may specify a time limit for reemployment without penalty of any individual approved under this subpart. If the agency wishes to continue the exception for an individual beyond the specified time, the request for renewal must demonstrate that the conditions justifying the initial exception still exist.

§ 553.202 Requests for delegation of authority to approve reemployment without penalty in emergencies.

(a) *Request by agency head.* The head of an agency may request OPM to delegate to the agency authority to approve individual exceptions on a case-by-case basis in specific circumstances. Authority to submit such a request may not be redelegated to an official below the agency's headquarters level (or, in the case of the Department of Defense, to an official below the headquarters level of the military department or Defense agency).

(b) *Content of request.* The request for delegation must include:

(1) Description of the situations for which authority is requested. The situations must result from emergencies posing immediate and direct threat to life or property or emergencies resulting from other unusual circumstances.

(2) Identification of the occupations, grades, and locations of positions that might be filled under the delegated authority.

(3) Statement of the expected duration of the reemployment to be approved under the requested authority.

(c) *Delegation agreement.* OPM will set out the conditions for use of each authority that it delegates under the provisions of this section in a delegation agreement. The agreement will remain in effect without time limit unless OPM specifies a termination date in the agreement, or unless OPM withdraws the delegated authority upon finding that the circumstances justifying the delegation have changed substantially or that the agency has failed to manage the authority in accordance with the law, the regulations, and the agreement itself.

§ 553.203 Status of individuals serving without penalty.

(a) *Reemployed civilian annuitants.* Annuitants reemployed with full salary and annuity under an exception granted in accordance with this part are not considered employees for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code. They may not elect to have retirement contributions withheld from their pay; they may not use any employment for which an exception is granted as a basis for a supplemental or recomputed annuity; and they may not participate in the Thrift Savings Plan.

(b) *Retired members of the uniformed services.* Retired members employed without reduction in retired or retainer pay under the provisions of this part are considered employees for the purposes of subchapter III of chapter 83 or chapter

84 of title 5, United States Code, and are subject to provisions of those statutes on the same basis as any other employees.

[FR Doc. 91-3501 Filed 2-8-91; 5:00 pm]

BILLING CODE 6325-01-M

5 CFR Parts 591 and 930

Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: Section 104 of the Federal Employees Pay Comparability Act (FEPCA), Public Law 101-509, enacted November 5, 1990, provides that as of the effective date of the section the Office of Personnel Management (OPM) shall by regulation prescribe in which of three Administrative Law (AL) levels—AL-3, AL-2, and AL-1—each administrative law judge position shall be placed and the qualifications to be required for appointment to each level. The Administrative Law Pay System for administrative law judges is set out in 5 U.S.C. 5372, in place of the former provision in that section, which required OPM to set administrative law judge pay independently of agency recommendations and ratings in accordance with subchapter III of chapter 53 and chapter 51 of title 5, United States Code, concerning pay and classification under the General Schedule (GS). These statutory changes require that certain implementing and conforming amendments be made to subpart B of part 930, title 5, Code of Federal Regulations, concerning the appointment, pay, and removal of administrative law judges.

DATES: Section 5372 of title 5, United States Code, as amended by section 104 of FEPCA, and the interim regulations set forth below become effective on the first day of the first pay period beginning on or after February 10, 1991; comments must be received on or before April 15, 1991.

ADDRESSES: Send or deliver written comments to the Office of Administrative Law Judges, Career Entry Group, Office of Personnel Management, room 2433, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Craig B. Pettibone, Assistant Director for Administrative Law Judges, (202) 606-0810 or (FTS) 266-0810.

SUPPLEMENTARY INFORMATION: Implementation of the new

administrative law judge pay system enacted by FEPCA requires revision of several provisions concerning qualifications requirements and pay for administrative law judges in OPM's regulations under subpart B of part 930, title 5, Code of Federal Regulations.

The revised regulations set forth those parameters of the new three level pay system that are established by law. AL-3 will have six rates of basic pay—A, B, C, D, E, and F—ranging respectively in 5 percent intervals from 65 percent of level IV of the Executive Schedule (EX-IV) to 90 percent of EX-IV. AL-2 will have one rate of basic pay equal to 95 percent of EX-IV. AL-1 will have one rate of basic pay equal to 100 percent of EX-IV. Upon appointment to a position at AL-3, an administrative law judge will initially be paid at the minimum rate A of AL-3, and will be advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate.

The revised regulations included a conversion schedule for moving the incumbent GS-15/16/17/18 judges into the new AL-3/2/1 levels. The AL pay for administrative law judges upon conversion will be at least equal to the GS rate payable immediately before such conversion. The base GS rate before conversion will include, where applicable, the 8 percent geographic differential authorized by Executive Order 12736 of December 12, 1990, published December 14, 1990, at 55 FR 51385. Also, pay upon conversion will be at least 8 percent higher than the GS scheduled rates for 1990, and an average of 14.5 percent higher than the GS rates actually paid in 1990.

The revised regulations also set the qualification requirements for placement of judges in each of the three AL levels. Guidelines for placement of positions in the various levels will be similar to those formerly used for GS-15/16/17/18 positions.

As required by the Administrative Procedure Act, all applicants for administrative law judge positions will continue to have to pass the competitive examination demonstrating that they possess the knowledge, skills, and abilities needed to conduct formal hearings. OPM Examination Announcement No. 318 currently requires 7 years of administrative law and/or litigation experience, and work at the GS-13 or GS-14 grade level. OPM recently requested comments from interested parties on these requirements. See OPM's notice at 52 FR 52339, published December 21, 1990.

AL-3 is the basic pay level for administrative law judge positions filled through competitive examination. AL-2 and AL-1 positions will be available primarily for key management positions. Judges must serve at least 1 year in an AL level, or in an equivalent or higher level in positions in the Federal service, before advancing to a higher AL level. Also, in a similar manner as in the past, agencies will be allowed to pay newly appointed judges at an advanced rate of AL-3 which is next above their existing pay or earnings, up to the maximum rate payable (F).

The decision to establish and/or fill any administrative law judge position, or chief judge position, will continue to be at the discretion of the employing agency, subject to the approval of OPM. Several agencies operate formal hearing programs without a chief judge, and agencies remain free to do so.

Further, § 930.206(c) is revised as previously proposed on July 25, 1989, at 54 FR 30898, to permit a newly appointed administrative law judge to transfer to another agency before completing 1 year of service, "provided the gaining and losing agencies agree to the transfer." Two comments received supported the change, while one comment objected that the proviso should be limited to judges within reach on the register.

Finally, OPM is amending the regulations in part 591 of title 5, Code of Federal Regulations, to make clear that administrative law judges who are employed in an area covered by a nonforeign area cost of living allowance (COLA) or post differential will continue to receive that benefit.

Agencies must document all pay changes for administrative law judges made in accordance with these regulations by completing a Standard Form 50, or equivalent, in the usual manner, and forwarding an extra copy directly to the Office of Administrative Law Judges, Career Entry Group, U.S. Office of Personnel Management, room 2433, 1900 E Street, NW., Washington, DC 20415. Agencies no longer need to complete an OPM Form 1390, as they did in reporting pay changes for GS-16/17/18 administrative law judge positions.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective

in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to make administrative law judge pay more competitive at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the personnel provisions under which Federal administrative law judges are appointed, paid, and employed.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR parts 591 and 930, subpart B, as follows:

PART 591—COST OF LIVING ALLOWANCES AND POST DIFFERENTIALS (NONFOREIGN AREAS)

1. The authority citation for part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR 1943-1948 Comp., p. 792; E.O. 12510; 3 CFR 1985 Comp., p. 338.

2. In § 591.203, paragraph (a) is amended by adding a new subparagraph (5) to read as follows:

§ 591.203 Agencies and employees covered.

(a) * * *

* * * * *

(5) Administrative law judges paid under 5 U.S.C. 5372.

* * * * *

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

* * * * *

Subpart B—Appointment, Pay and Removal of Administrative Law Judges

3. The authority citation for subpart B of part 930 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

4. In § 930.202, paragraph (d) is revised to read as follows:

§ 930.202 Definitions.

* * * * *

(d) *Promotion* means a change from a lower to a higher level position.

5. Section 930.203 is revised to read as follows:

§ 930.203 Examination.

(a) *Periodic open competition.* Applicants for entrance into the competitive service as administrative law judges will be examined periodically in open competition as announced by OPM. Applications received by OPM during such periods of open competition will be reviewed as a group.

(b) *Minimum qualifications.* All applicants must demonstrate in their written applications and supporting materials that they meet the qualifying experience requirements in OPM Examination Announcement No. 318.

(c) *Supplemental qualifications.* Applicants who meet minimum qualification requirements will be assigned a score on the supplemental qualifications statement described in the examination announcement.

(d) *Participation in examination procedures.* Applicants who meet minimum qualification requirements and are assigned a score on the supplemental qualifications statement become eligible to compete for a final rating through participating in three additional examination procedures described in the examination announcement:

- (1) A written demonstration;
- (2) A panel interview; and
- (3) A personal reference inquiry.

(e) *Final rating.* Applicants who complete the examination procedures described in paragraphs (c) and (d) of this section will be assigned a final numerical rating based on a weighted sum of the scores for each of the four parts, transmuted to a scale of 0 to 100, with 70 required to pass. For applicants entitled thereto, the final passing score will be augmented by 5 or 10 veteran preference points.

(f) *Preparation of certificates.* As agencies request certificates of applicants from registers to consider in filling vacant administrative law judge positions in various geographic areas, all applicants who are eligible and available for those positions will be ranked to identify the best qualified applicants to be certified. Eligible applicants who have completed the final rating process will be ranked on the basis of assigned final ratings, augmented by veteran preference points if applicable. At least three eligible applicants will be certified to the employing agency for consideration for each vacancy.

(g) *Appeal of rating.* Applicants who obtain an ineligible rating or applicants who are dissatisfied with their final rating may appeal the rating to the Administrative Law Judge Rating Appeals Panel, Office of Personnel Management, Washington, DC 20415, within 30 days after the date of final action by the Office of Administrative Law Judges or such later time as may be allowed by the Panel.

6. Section 930.204 is revised to read as follows:

§ 930.204 Promotion.

(a) When OPM places an occupied administrative law judge position at a higher level, OPM will direct the promotion of the incumbent administrative law judge. The promotion will be effective on the date named by OPM.

(b) When OPM places one of an agency's administrative law judge positions at a higher level on the basis of the position's managerial and administrative nature, an agency may promote one of its administrative law judges to such a position, provided the selection and/or promotion is in accordance with regular civil service procedures.

7. Section 930.206 is revised to read as follows:

§ 930.206 Transfer.

(a) An agency may transfer an administrative law judge from another agency with the prior approval of OPM on a noncompetitive basis in accordance with regular civil service procedures, provided the administrative law judge meets all current examination requirements for appointment as an administrative law judge under OPM Examination Announcement No. 318.

(b) An agency may not transfer a person from one administrative law judge position to another administrative law judge position under paragraph (a) of this section sooner than 1 year after the person's last appointment, unless the gaining and losing agencies agree to the transfer.

8. Section 930.207 is revised to read as follows:

§ 930.207 Reinstatement.

An agency may reinstate former administrative law judges who have served with absolute status under 5 U.S.C. 3105 only after they have established their eligibility in accordance with all current examination requirements of OPM Examination Announcement No. 318. Reinstatement is subject to investigation by, and the prior approval of, OPM.

9. Section 930.210 is revised to read as follows:

§ 930.210 Pay.

(a) OPM will place each administrative law judge position in one of the three grades or levels of basic pay, AL-3, AL-2 or AL-1, of the Administrative Law Pay System established for such positions under 5 U.S.C. 5372 in accordance with the regulations and procedures in this section. AL-3 will have six rates of basic pay, A, B, C, D, E, and F, ranging respectively in 5 percent intervals from 65 percent of level IV of the Executive Schedule (EX-IV) to 90 percent of EX-IV. AL-2 will have one rate of basic pay equal to 95 percent of EX-IV. AL-1 will have one rate of basic pay equal to 100 percent of EX-IV.

(b) An agency may not grant a monetary and honorary award under 5 U.S.C. 4503 for superior accomplishment by an administrative law judge in the performance of adjudicatory functions.

(c) AL-3 is the basic pay level for administrative law judge positions filled through competitive examination under OPM Examination Announcement No. 318, as provided in section 930.203 of this part.

(d) Subject to the approval of OPM, agencies may establish administrative law judge positions at pay levels AL-2 and AL-1. Administrative law judge positions may be placed at such levels when they involve significant administrative and managerial responsibilities.

(e) Judges must serve at least 1 year in each AL level, in an equivalent or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time.

(f) Except as provided in paragraph (g) of this section, upon appointment to an administrative law judge position placed in AL-3, an administrative law judge shall be paid at the minimum rate A of AL-3, and shall be automatically advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate. Time in a nonpay status is generally creditable service in the computation of a waiting period only in so far as it does not exceed 2 weeks per year for each 52 weeks of service. However, time in a nonpay status is also fully creditable if absence is due to military service, as defined in 5 U.S.C. 8331(13), or due to receipt of injury compensation under chapter 81 of title 5, United States Code.

(g) Upon appointment to a position at AL-3, an administrative law judge will be paid at the minimum rate A, unless the administrative law judge is eligible for a higher rate B, C, D, E, or F because of prior service or superior qualifications, as follows—

(1) An agency may offer an administrative law judge applicant with prior Federal service a higher than minimum rate, without obtaining the prior approval of OPM in order to pay the rate that is next above the applicant's highest previous Federal rate of pay, up to the maximum rate F.

(2) An agency may offer an administrative law judge applicant with superior qualifications a higher than minimum rate if it first obtains approval from OPM to offer such a higher rate to an applicant who is within reach on a certificate of eligible administrative law judge applicants in order to pay that rate of pay that is next above the applicant's existing pay or earnings up to the maximum rate F. "Superior qualifications" for applicants includes having legal practice before the hiring agency, having practice in another forum with legal issues of concern to the hiring agency, or having an outstanding reputation among others in the field. OPM will approve such payment of higher than minimum rates for applicants with superior qualifications only when it is clearly necessary to meet the needs of the Government.

(h) Upon appointment to an administrative law judge position placed at AL-2 or AL-1, administrative law judges will be paid at the established rates for those levels.

(i) In making initial pay adjustments for administrative law judges from positions paid under the General Schedule to positions paid under the new pay system established under 5 U.S.C. 5372, the rate of basic pay for any such judge shall, upon conversion to the new pay system, be at least equal to the rate that was payable to that individual immediately before such conversion.

(j) Except as provided in paragraph (k) of this section, on the first day of the first applicable pay period beginning on or after February 10, 1991, administrative law judges will be converted from the General Schedule to AL-3, 2, and 1 as follows:

General schedule	AL
GS-15, Steps 1-2-3-4.....	AL-3, Rate A.
GS-15, Steps 5-6.....	AL-3, Rate B.
GS-15, Steps 7-8-9.....	AL-3, Rate C.
GS-15, Step 10.....	AL-3, Rate D.
GS-16, Steps 1-2-3.....	AL-3, Rate C.
GS-16, Steps 4-5-6.....	AL-3, Rate D.
GS-16, Steps 7-8.....	AL-3, Rate E.

General schedule	AL
GS-16, Step 9.....	AL-3, Rate F.
GS-17, Steps 1-5.....	AL-2.
GS-18.....	AL-1.

(k) In making the initial conversion from the General Schedule pay rates to the new AL pay system for administrative law judges, effective on the first day of the first applicable pay period beginning on or after February 10, 1991, those GS-15 and GS-16 administrative law judges receiving the 8 percent interim geographic adjustments authorized by Schedule 9 of Executive Order 12736 of December 12, 1990, will convert as follows:

General schedule	AL
GS-15, Steps 1-2.....	AL-3, Rate A.
GS-15, Steps 3-4-5.....	AL-3, Rate B.
GS-15, Steps 6-7.....	AL-3, Rate C.
GS-15, Steps 8-9-10.....	AL-3, Rate D.
GS-16, Steps 1-2.....	AL-3, Rate C.
GS-16, Steps 3-4.....	AL-3, Rate D.
GS-16, Steps 5-6-7.....	AL-3, Rate E.
GS-16, Steps 8-9.....	AL-3, Rate F.

(l) Agencies must document all pay changes made in accordance with this section by completing a Standard Form 50, or equivalent, in the usual manner and forwarding an extra copy directly to the Office of Administrative Law Judges, Career Entry Group, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

10. In section 930.215, paragraph (c)(2) is revised to read as follows:

§ 930.215 Reduction in force.

* * * * *

(c) * * *

(2) On request of administrative law judges who are reached by an agency in a reduction in force and who are notified they are to be separated, furloughed for more than 30 days, or demoted, OPM will place their names on OPM's priority referral list for administrative law judges displaced in a reduction in force for the grade or level in which they last served and for all lower grades or levels.

* * * * *

11. Section 930.216, paragraph (k), is revised to read as follows:

§ 930.216 Temporary reemployment senior administrative law judges.

* * * * *

(k) A senior administrative law judge will be paid by the employing agency the current rate of pay for the level at which the duties to be performed have been placed and at the lowest rate of the level that is nearest (when rounded up)

to the highest previous grade and step, or level and rate, attained as an administrative law judge before retirement. An amount equal to the annuity allocable to the period of actual employment will be deducted from his or her pay and deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

[FR Doc. 91-3503 Filed 2-8-91; 5:00 pm]

BILLING CODE 6325-01-M